

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL E. JACQUES,  
Plaintiff,

v.

JEFF MACOMBER, et al.,  
Defendants.

No. 2:23-cv-0345 AC P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. Plaintiff has also filed a motion for a preliminary injunction. ECF No. 3.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF Nos. 1, 6. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

1 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
 2 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
 3 § 1915(b)(2).

## 4 II. Complaint

### 5 A. Statutory Screening of Prisoner Complaints

6 The court is required to screen complaints brought by prisoners seeking relief against “a  
 7 governmental entity or officer or employee of a governmental entity.” 28 U.S.C. § 1915A(a).  
 8 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are  
 9 “frivolous, malicious, or fail[] to state a claim upon which relief may be granted,” or that “seek[]  
 10 monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

11 A claim “is [legally] frivolous where it lacks an arguable basis either in law or in fact.”  
 12 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
 13 Cir. 1984). “[A] judge may dismiss . . . claims which are ‘based on indisputably meritless legal  
 14 theories’ or whose ‘factual contentions are clearly baseless.’” Jackson v. Arizona, 885 F.2d 639,  
 15 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as  
 16 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a  
 17 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.  
 18 Franklin, 745 F.2d at 1227-28 (citations omitted).

19 “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the  
 20 claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of  
 21 what the . . . claim is and the grounds upon which it rests.’” Bell Atl. Corp. v. Twombly, 550  
 22 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).  
 23 “Failure to state a claim under § 1915A incorporates the familiar standard applied in the context  
 24 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).” Wilhelm v. Rotman,  
 25 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure  
 26 to state a claim, a complaint must contain more than “a formulaic recitation of the elements of a  
 27 cause of action;” it must contain factual allegations sufficient “to raise a right to relief above the  
 28 speculative level.” Twombly, 550 U.S. at 555 (citations omitted). “[T]he pleading must contain

1 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally  
 2 cognizable right of action.” Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur  
 3 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

4 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to  
 5 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting  
 6 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual  
 7 content that allows the court to draw the reasonable inference that the defendant is liable for the  
 8 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this  
 9 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.  
 10 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the  
 11 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,  
 12 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

#### 13 B. Plaintiff’s Allegations

14 In the complaint, plaintiff claims that defendants Macomber, Lynch, and Franceschi  
 15 violated her<sup>1</sup> rights under the Eighth and Fourteenth Amendments. ECF No. 1 at 6-7. Macomber  
 16 is the Secretary of the California Department of Corrections and Rehabilitation (CDCR) and has  
 17 general oversight responsibilities over all of CDCR, including making sure that policies and  
 18 procedures of California prisons are lawful. Id. at 7-8. Lynch is the warden at California State  
 19 Prison-Sacramento (CSP-SAC), and his duties include policy and procedure management, as well  
 20 as equipment installation and operation. Id. at 8. Franceschi, as Chief of Mental Health for  
 21 CDCR, is responsible for providing adequate treatment to prisoners regarding their mental health.  
 22 Id.

23 Plaintiff alleges that her right to privacy was violated with the installation of cameras  
 24 within the all-purpose mental health treatment rooms where she receives therapy. Id. at 9.  
 25 Although plaintiff was told the cameras were not operational and would be removed, the cameras  
 26 were later activated, leading to custody staff becoming aware of and exposing the issues she

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27 <sup>1</sup> Plaintiff states that she uses she/her pronouns. ECF No. 1 at 7. If at any time plaintiff wishes  
 28 the court to use different pronouns, she may so inform the court.

1 discussed with her mental health provider. Id. at 10. This has had devastating effects on  
2 plaintiff's mental health and well-being. Id. at 10-11, 18. There is no safety related reason to  
3 have cameras in the rooms because prior to treatment inmates are strip searched, placed in  
4 restraints, and then secured in a holding cell with an outside lock. Id. at 12. Plaintiff's health  
5 care providers have expressed concern over the privacy implications of having these cameras in  
6 the treatment room to their superiors, and the privacy violations extend to all inmates receiving  
7 treatment in those rooms, particularly transgender women. Id. at 11, 17. This concern has led  
8 plaintiff to file multiple appeals to CDCR administration regarding this matter with no apparent  
9 resolution. Id. at 13-14. Plaintiff requests compensatory and punitive damages, as well as an  
10 injunction requiring the removal of the cameras. Id. at 23.

11 C. Discussion

12 i. Deliberate Indifference

13 “[T]o maintain an Eighth Amendment claim based on prison medical treatment, an inmate  
14 must show ‘deliberate indifference to serious medical needs.’” Jett v. Penner, 439 F.3d 1091,  
15 1096 (9th Cir. 2006) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). This requires plaintiff  
16 to show (1) “a ‘serious medical need’ by demonstrating that ‘failure to treat a prisoner’s condition  
17 could result in further significant injury or the unnecessary and wanton infliction of pain,’” and  
18 (2) “the defendant’s response to the need was deliberately indifferent.” Id. (some internal  
19 quotation marks omitted) (quoting McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992)).

20 In this case, plaintiff alleges that the defendants were deliberately indifferent to her  
21 serious medical needs because the disclosure of the contents of her private mental health  
22 treatment sessions has affected her treatment and led to extreme levels of distress that has resulted  
23 in concerns over her ability to speak freely, difficulties concentrating, increased paranoia,  
24 avoidance of others, increased PTSD, trauma, losing her appetite, inability to sleep, and racing  
25 thoughts. ECF No. 1 at 5, 18, 21. The allegation that plaintiff’s direct mental health care  
26 providers expressed their concerns to “their leadership,” supports an inference that Franceschi, as  
27 Chief of Mental Health, was aware of the cameras use, the possibility of harm, and resulting harm  
28 and had some authority to intervene. Similarly, the allegedly widespread nature of the violations,

1 coupled with Lynch's responsibility for the decision to install and turn on the cameras, supports  
2 an inference that Lynch, as warden of CSP-SAC, was aware of the privacy violations and  
3 detrimental effect they would have. Despite Franceschi and Lynch's awareness of the violations,  
4 neither took any action and plaintiff therefore sufficiently states deliberate indifference claims  
5 against them. However, there is no respondeat superior liability under section 1983. Other than  
6 general supervisory responsibilities, plaintiff has not alleged any facts that would suggest that  
7 Macomber "participated in or directed the violations, or knew of the violations and failed to act to  
8 prevent them." Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). Therefore, plaintiff has not  
9 sufficiently stated a claim for deliberate indifference against Macomber.

10 ii. Right to Privacy

11 The Constitution protects the individual's interest in avoiding disclosure of personal  
12 matters. Whalen v. Roe, 429 U.S. 589, 599 (1977). This includes medical information. Tucson  
13 Woman's Clinic v. Eden, 379 F.3d 531, 551 (9th Cir. 2004), abrogated on other grounds, Dobbs  
14 v. Jackson Women's Health Org., 597 U.S. 215 (2022). The privacy protections afforded to  
15 personal information, however, are not absolute, and can be infringed when there is a "proper  
16 governmental interest." United States v. Westinghouse Elec. Corp., 638 F.2d 570, 577 (9th Cir.  
17 1980).

18 In this case, plaintiff alleges that the defendants violated her right to privacy, specifically  
19 as it pertains to her medical treatment, gender identity, and sexual orientation. ECF No. 1 at 6-7.  
20 Plaintiff's complaint hinges on the viewing of her private medical treatment sessions by custody  
21 officials, as well as the subsequent disclosure of her transgender status and sexual orientation to  
22 other inmates in her unit. Id. at 10. As there appears no legitimate penological interest in custody  
23 officials watching and then sharing the contents of plaintiff's private therapy sessions, she has  
24 sufficiently stated a claim for violation of her right to privacy. For the same reasons plaintiff  
25 sufficiently alleged that Franceschi and Lynch were liable for violating her Eighth Amendment  
26 rights, she has sufficiently alleged that they are liable for the violation of her Fourteenth  
27 Amendment rights. However, as with the Eighth Amendment claim, plaintiff fails to state a  
28 Fourteenth Amendment claim against Macomber.

1                   iii. Official Capacity

2           Plaintiff states she is suing the defendants in their individual and official capacities. ECF  
3 No. 1 at 18. However, claims for damages against state officials acting in their official capacity  
4 are barred by sovereign immunity because “a suit against a state official in his or her official  
5 capacity is not a suit against the official but rather is a suit against the official’s office” and  
6 therefore “no different from a suit against the State itself.” Will v. Mich. Dep’t of State Police,  
7 491 U.S. 58, 71 (1989) (citations omitted). Accordingly, any claim for damages against  
8 defendants in their official capacities is barred.

9           To the extent plaintiff seeks injunctive relief in the form of removal of the cameras in the  
10 two mental health all-purpose rooms (ECF No. 1 at 23), Lynch, as the person who is responsible  
11 for equipment installation, appears to be the appropriate person from whom to request this  
12 relief. Plaintiff therefore properly states a claim for injunctive relief against Lynch in his official  
13 capacity. See Colwell v. Bannister, 763 F.3d 1060, 1070 (9th Cir. 2014) (to state a claim for  
14 injunctive relief plaintiff must “identify the law or policy challenged as a constitutional violation  
15 and name the official within the entity who can appropriately respond to injunctive relief”  
16 (citation omitted)). Because Lynch appears to be the most appropriate defendant to provide the  
17 requested injunctive relief, any official capacity claims against Macomber and Franceschi are  
18 redundant because an official capacity claim is equivalent to a claim against the entity and they  
19 can therefore be dismissed. See Ctr. for Bio-Ethical Reform, Inc. v. Los Angeles Cnty. Sheriff  
20 Dep’t, 533 F.3d 780, 799 (9th Cir. 2008) (where local government entity and officer are both  
21 named and officer is named in official capacity only, officer may be dismissed as redundant)  
22 (citations omitted); Hodgins v. Woodford, No. 05-cv-0682 MCE GGH, 2006 WL 2482423, at \*2,  
23 2006 U.S. Dist. LEXIS 63991, at \*7 (E.D. Cal. Aug. 28, 2006) (“It is not necessary to name  
24 multiple defendants in their official capacity. Plaintiff need only name that official who has some  
25 cognizance over the policy at issue and who could effectively issue orders within CDCR if the  
26 court were to rule in plaintiff’s favor.”).

27                   D. Leave to Amend

28           For the reasons set forth above, the court finds that the complaint does not state any

1 cognizable claims against Macomber in his individual capacity and that the official capacity  
2 claims against Macomber and Franceschi are redundant. However, it appears that plaintiff may  
3 be able to allege facts to remedy some of the deficiencies and she will be given the opportunity to  
4 amend the complaint if she desires. Plaintiff may proceed forthwith to serve defendants Lynch  
5 and Franceschi on her claims that they violated her rights under the Eighth and Fourteenth  
6 Amendment and on her official capacity claim against Lynch, or she may delay serving any  
7 defendant and amend the complaint.

8 Plaintiff will be required to complete and return the attached notice advising the court how  
9 she wishes to proceed. If plaintiff chooses to amend the complaint, she will be given thirty days  
10 to file an amended complaint. If plaintiff elects to proceed on her claims against defendants  
11 Franceschi and Lynch without amending the complaint, the court will proceed to serve the  
12 complaint. A decision to go forward without amending the complaint will be considered a  
13 voluntarily dismissal without prejudice of all claims against Macomber and the official capacity  
14 claims against Franceschi.

15 If plaintiff chooses to file an amended complaint, she must demonstrate how the  
16 conditions about which she complains resulted in a deprivation of her constitutional rights. Rizzo  
17 v. Goode, 423 U.S. 362, 370-71 (1976). Also, the complaint must allege in specific terms how  
18 each named defendant is involved. Arnold v. Int'l Bus. Machs. Corp., 637 F.2d 1350, 1355 (9th  
19 Cir. 1981). There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link  
20 or connection between a defendant's actions and the claimed deprivation. Id.; Johnson v. Duffy,  
21 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and conclusory allegations of official  
22 participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d 266,  
23 268 (9th Cir. 1982) (citations omitted).

24 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make  
25 her amended complaint complete. Local Rule 220 requires that an amended complaint be  
26 complete in itself without reference to any prior pleading. This is because, as a general rule, an  
27 amended complaint supersedes any prior complaints. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.  
28 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th

1 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled  
2 in subsequent amended complaint to preserve appeal). Once plaintiff files an amended complaint,  
3 any previous complaints no longer serve any function in the case. Therefore, in an amended  
4 complaint, as in an original complaint, each claim and the involvement of each defendant must be  
5 sufficiently alleged.

### 6 III. Motion for Preliminary Injunction

7 Plaintiff has filed a motion for a preliminary injunction in which she requests an order  
8 directing that all cameras be removed from the mental health treatment rooms in the short-term  
9 restrictive housing unit at CSP-SAC. ECF No. 3.

10 “A plaintiff seeking a preliminary injunction must establish that [s]he is likely to succeed  
11 on the merits, that [s]he is likely to suffer irreparable harm in the absence of preliminary relief,  
12 that the balance of equities tips in [her] favor, and that an injunction is in the public interest.”  
13 Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008) (citations omitted). The propriety of  
14 a request for injunctive relief hinges on a threat of irreparable injury that must be imminent in  
15 nature. See Caribbean Marine Servs. Co. v. Baldrige, 844 F.2d 668, 674 (9th Cir. 1988)  
16 (“Speculative injury does not constitute irreparable injury sufficient to warrant granting a  
17 preliminary injunction.” (citing Goldie’s Bookstore, Inc. v. Superior Court, 739 F.2d 466, 472  
18 (9th Cir. 1984))).

19 Because plaintiff has been transferred out of CSP-SAC and has not alleged any facts  
20 showing she has a reasonable expectation of being transferred back, her request for preliminary  
21 injunctive relief is moot, and therefore, should be denied. See Johnson v. Moore, 948 F.2d 517,  
22 519 (9th Cir. 1991) (per curiam) (claims for injunctive relief related to conditions of confinement  
23 were moot where prisoner was transferred to another facility and “demonstrated no reasonable  
24 expectation of returning to [the original facility]” (citing Darring v. Kincheloe, 783 F.2d 874, 876  
25 (9th Cir. 1986))).

### 26 IV. Plain Language Summary of this Order for a Pro Se Litigant

27 Your request to proceed in forma pauperis is granted. That means you do not have to pay  
28 the entire filing fee now. You will pay it over time, out of your trust account.

1 Some of the allegations in the complaint state claims against the defendants and some do  
2 not. Your right to privacy and deliberate indifference claims against Franceschi and Lynch  
3 properly state a claim, while those same claims against Macomber do not. To link the claims to  
4 Macomber more information is needed about how he was personally involved in the violations or  
5 had knowledge of the violations and failed to stop them.

6 You have a choice to make. You may *either* (1) proceed immediately on your right to  
7 privacy and deliberate indifference claims against Franceschi and Lynch and claim for injunctive  
8 relief against Lynch and voluntarily dismiss the other claims *or* (2) try to amend the complaint. If  
9 you want to go forward without amending the complaint, you will be voluntarily dismissing  
10 without prejudice all claims against Macomber and the claim for injunctive relief against  
11 Franceschi. If you choose to file an amended complaint, it must include all claims you want to  
12 bring. Once an amended complaint is filed, the court will not look at any information in the  
13 original complaint. **Any claims and information not in the first amended complaint will not**  
14 **be considered.** You must complete the attached notification showing what you want to do and  
15 return it to the court. Once the court receives the notice, it will issue an order telling you what  
16 you need to do next (i.e. file an amended complaint or wait for defendants to be served).

#### 17 CONCLUSION

18 In accordance with the above, IT IS HEREBY ORDERED that:

- 19 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.
- 20 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff  
21 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.  
22 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the  
23 appropriate agency filed concurrently herewith.
- 24 3. Plaintiff's allegations against defendant Macomber in his individual capacity do not  
25 state claims for which relief can be granted and her official capacity claims against Macomber  
26 and Franceschi are redundant.
- 27 4. Plaintiff has the option to proceed immediately on her Eighth and Fourteenth  
28 Amendment claims against defendants Franceschi and Lynch in their individual capacities and


1 against Lynch in his official capacity as set forth in Section II.C above, or to amend the  
2 complaint.

3 5. Within fourteen days of service of this order, plaintiff shall complete and return the  
4 attached form notifying the court whether she wants to proceed on the screened complaint or  
5 whether she wants to file an amended complaint. If plaintiff does not return the form, the court  
6 will assume that she is choosing to proceed on the complaint as screened and will recommend  
7 dismissal without prejudice of all claims against defendant Macomber and the official capacity  
8 claims against Franceschi.

9 IT IS FURTHER RECOMMENDED that plaintiff's motion for a preliminary injunction  
10 (ECF No. 3) be DENIED as moot.

11 These findings and recommendations are submitted to the United States District Judge  
12 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
13 after being served with these findings and recommendations, plaintiff may file written objections  
14 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings  
15 and Recommendations." Plaintiff is advised that failure to file objections within the specified  
16 time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153  
17 (9th Cir. 1991).

18 DATED: September 20, 2024

19   
20 ALLISON CLAIRE  
21 UNITED STATES MAGISTRATE JUDGE  
22  
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NOTICE OF ELECTION

Check one:

\_\_\_\_\_ Plaintiff wants to proceed immediately on her Eighth and Fourteenth Amendment claims against defendants Franceschi and Lynch in their individual capacities and against Lynch in his official capacity without amending the complaint. Plaintiff understands that by going forward without amending the complaint she is voluntarily dismissing without prejudice all claims against Macomber and her official capacity claims against Franceschi pursuant to Federal Rule of Civil Procedure 41(a).

\_\_\_\_\_ Plaintiff wants to amend the complaint.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Michael E. Jacques  
Plaintiff pro se